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Arizona Corporation Commission

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Attorneys for Arizona Public Service Company

**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

TOM FORESE, Chairman  
BOB BURNS  
DOUG LITTLE  
ANDY TOBIN  
BOYD DUNN

IN THE MATTER OF THE  
APPLICATION OF ARIZONA PUBLIC  
SERVICE COMPANY FOR A HEARING  
TO DETERMINE THE FAIR VALUE OF  
THE UTILITY PROPERTY OF THE  
COMPANY FOR RATEMAKING  
PURPOSES, TO FIX A JUST AND  
REASONABLE RATE OF RETURN  
THEREON, TO APPROVE RATE  
SCHEDULES DESIGNED TO DEVELOP  
SUCH RETURN.

DOCKET NO. E-01345A-16-0036

**RESPONSE TO EFCA'S MOTION TO  
STRIKE REPLY BRIEF AND  
NOTICE OF LODGING SUR-  
RESPONSE**

IN THE MATTER OF FUEL AND  
PURCHASED POWER PROCUREMENT  
AUDITS FOR ARIZONA PUBLIC  
SERVICE COMPANY.

DOCKET NO. E-01345A-16-0123

1 This discovery dispute centers around whether EFCA has fully responded to  
2 properly issued data requests. As evidenced through APS's Motion to Compel and  
3 supporting Reply, the answer is clearly no. APS does not plan on responding to every  
4 argument in EFCA's Motion to Strike and Sur-Response. These arguments would be  
5 more appropriate in an oral argument, and APS would be happy to participate if the  
6 Commission found one necessary. However, given EFCA's unusual attempt at getting a  
7 second bite of the apple by filing a Motion to Strike a properly filed Reply and Notice of  
8 Lodging Sur-Response, APS offers this brief written response.

9 In its Motion to Strike Reply Brief, EFCA argues that APS has sought to expand  
10 the scope of its initial data requests. On the contrary, APS's Reply narrowed the  
11 disputes at issue and appropriately withdrew data requests that EFCA has subsequently  
12 responded to in a reasonable manner from APS's Motion to Compel.<sup>1</sup> Additionally, the  
13 Reply was filed in support of APS's original Motion to Compel—it could never expand  
14 APS's original requests. And despite EFCA's assertions, the Reply did not seek new  
15 information. Instead, the Reply explains the deficiencies in the remaining data request  
16 responses at issue, and why APS believes the responses provided by EFCA have thus far  
17 been inadequate.

18 EFCA's answers to basic data requests have not been responsive and should be  
19 compelled to provide a more fulsome response. For example, in APS 1.1(A), APS asked  
20 EFCA to describe EFCA's business, including its purpose, its source of funding and  
21 what EFCA does or seeks to accomplish in relation to the interest of its members and  
22 managers. APS's Reply explained that APS did not believe EFCA's supplemental  
23 response of "[w]ithout waiving and subject to the forgoing objections, EFCA is funded  
24 by its members," was an adequate answer and the response lacked any description. APS  
25 then provided an example of what it believed would be a satisfactory answer to the  
26 question.<sup>2</sup> EFCA obviously disagrees.

27 Similarly, with APS 1.1(B), APS asked EFCA to provide a list of EFCA's  
28 members and members of its Board of Directors or any other governing board or

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<sup>1</sup> See APS's Reply to EFCA's Response to APS's Motion to Compel, page 3 lines 6-8.

<sup>2</sup> *Id.* lines 17-24.

1 decision-making body. EFCA responded that it had disclosed the names of its members  
2 in its Application to Intervene and in response to APS 1.2 and therefore had sufficiently  
3 responded. The Reply explains that this data request is not seeking the same  
4 information as APS 1.2, which is further supported by the fact that APS's Reply  
5 withdrew APS 1.2 from the Motion to Compel because EFCA's response was  
6 sufficient.<sup>3</sup> However, for APS 1.1(B), EFCA failed to provide a list of the governing  
7 board or decision-making body. APS's Reply explains that EFCA's response "that all  
8 decisions are made by its members" does not sufficiently answer the question of who is  
9 the governing or decision-making body.

10 EFCA obviously disagrees with APS on 1.1(A), 1.1(B), and other data requests.  
11 But resolving the disagreements between EFCA and APS is a matter for the Presiding  
12 Officer. If EFCA thinks more argumentation is needed, it should file a request for oral  
13 argument, not file a motion to strike and sur-response. And if it believes the decision is  
14 improper, it can file a motion for reconsideration. Although APS believes that the filed  
15 papers provide sufficient information to rule on the Motion to Compel, if oral argument  
16 is necessary, APS will participate and provide more detailed responses to EFCA's  
17 arguments at that time.

18 RESPECTFULLY SUBMITTED this 4 day of January 2017.

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28 <sup>3</sup> *Id.* page 5 lines 1-3.

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